

REMARKS/ARGUMENTS

Status of Claims

Claims 1-20 stand rejected.

Thus, claims 1-20 are pending in this patent application.

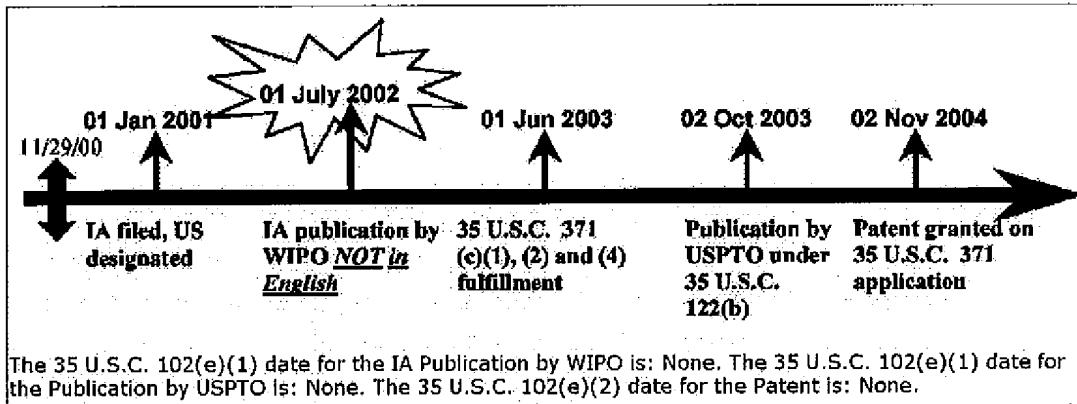
The Applicant hereby requests further examination and reconsideration of the presently claimed application.

Claim Rejections – 35 U.S.C. § 102

Claims 1-20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2006/0198357 (*Qiao*). The Applicant asserts that *Qiao* is not available as § 102(e) prior art, and thus the rejection over *Qiao* should be withdrawn. MPEP § 706.02(f)(1) provides the examination guidelines for classifying prior art under § 102(e). Specifically, MPEP § 706.02(f)(1)(II) provides nine examples of fact patterns associated with references that may potentially be § 102(e) prior art. *Qiao* is a § 371 national stage application of an International Application that was filed on December 26, 2003 and was published in Chinese, not English. As such, *Qiao* fits the fact pattern identified in MPEP § 706.02(f)(1)(II) Example 5, which is shown below:

Example 5: References based on the national stage (35 U.S.C. 371) of an International Application filed on or after November 29, 2000 and which was not published in English under PCT Article 21(2).

All references, whether the WIPO publication, the U.S. patent application publication or the U.S. patent, of an international application (IA) that was filed on or after November 29, 2000 but was not published in English under PCT Article 21(2) have no 35 U.S.C. 102 (e) prior art date at all. According to 35 U.S.C. 102 (e), no benefit of the international filing date (nor any U.S. filing dates prior to the IA) is given for 35 U.S.C. 102 (e) prior art purposes if the IA was published under PCT Article 21(2) in a language other than English, regardless of whether the international application entered the national stage. Such references may be applied under 35 U.S.C. 102 (a) or (b) as of their publication dates, but never under 35 U.S.C. 102 (e).



(Emphasis added). As shown above, references that meet the fact pattern in MPEP § 706.02(f)(1)(II) Example 5, such as *Qiao*, are not available as § 102(e) prior art. As such, the § 102(e) rejection of claims 1-20 over *Qiao* should be withdrawn.

Finality of Next Office Action

The Applicant would like to point out that claims 1-20 are not currently amended. The Applicant would also like to remind the Examiner of the rules regarding finality of office actions. Specifically, MPEP § 706.07(a) states that the next office action should not be final if the Examiner changes the grounds of rejection for claims 1-20. Should the Examiner insist on making the next office action final, the Applicant requests a telephone conference with the Examiner and the Supervisory Patent Examiner to clarify the finality issue, and thereby potentially avoid a petition under 37 C.F.R. § 1.181.

CONCLUSION

Consideration of the foregoing amendments and remarks, reconsideration of the application, and withdrawal of the rejections and objections is respectfully requested by the Applicant. No new matter is introduced by way of the amendment. It is believed that each ground of rejection raised in the Final Office Action dated July 2, 2009 has been fully addressed. If any fee is due as a result of the filing of this paper, please appropriately charge such fee to Deposit Account Number 50-1515 of Conley Rose, P.C., Texas. If a petition for extension of time is necessary in order for this paper to be deemed timely filed, please consider this a petition therefore.

If a telephone conference would facilitate the resolution of any issue or expedite the prosecution of the application, the Examiner is invited to telephone the undersigned at the telephone number given below.

Respectfully submitted,
CONLEY ROSE, P.C.

Date: 8/11/09


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